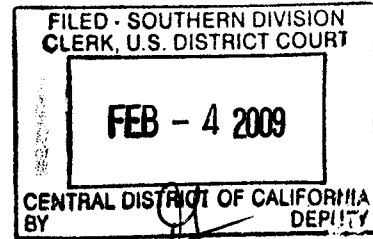


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD IN THIS ACTION ON THIS DATE.

DATED: 2-04-09
J. Beale
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ARTABIUS WATT DARDEN,
Plaintiff,
v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS,
Defendants.

Case No. EDCV 08-1402-GW (MLG)
MEMORANDUM AND ORDER DISMISSING
SECOND AMENDED COMPLAINT WITH
LEAVE TO AMEND

I. Facts

Plaintiff Artabius Watt Darden, who is currently a state prisoner incarcerated at the Chuckawalla State Prison in Blythe, California, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 on October 22, 2008. The cover page of the complaint named the California Department of Corrections ("CDC") as the Defendant. The allegations in the complaint identified the Wasco State Prison and the Chuckawalla State Prison as the Defendants. Plaintiff made a series of allegations against these Defendants. He claimed a denial of his right of access to the law library, denial of access to the grievance procedure, denial of the right to receive

1 mail, denial of medical care and retaliation. No facts were alleged
2 in support of these claims and no individual was identified as having
3 committed the misconduct.

4 On October 23, 2008, this Court dismissed the complaint with
5 leave to amend pursuant to the duty to screen civil rights complaints
6 filed by prisoners. See 28 U.S.C. § 1915(e)(2). The Court found that
7 the CDC and both prisons must be dismissed because they are state
8 agencies entitled to sovereign immunity under the Eleventh Amendment.
9 See *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195 (9th Cir. 2005);
10 *Natural Resources Defense Council v. California Dep't of Transp.*, 96
11 F.3d 420, 421 (9th Cir.1996); *Taylor v. List*, 880 F.2d 1040, 1045
12 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a
13 state agency entitled to Eleventh Amendment immunity); *Mitchell v.*
14 *Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir.
15 1989). Plaintiff was instructed to file a first amended complaint
16 within 30 days against those corrections officers who allegedly
17 violated his constitutional rights.

18 On November 13, 2008, Plaintiff filed his first amended
19 complaint. The first amended complaint was identical to the original
20 complaint, naming the same defendants and suffering from the same
21 deficiencies. Accordingly, the first amended complaint was dismissed
22 with leave to amend.

23 On January 16, 2009, Plaintiff filed a second amended complaint.
24 This complaint contains an entirely new set of allegations of
25 misconduct by a new set of defendants. Plaintiff asserts claims
26 against the prison law librarian for denying him access to legal
27 materials. He asserts that a Sgt. Ayala was deliberately indifferent
28 to a serious medical need. He complains that M. Bunts, an appeal

1 coordinator, screened out grievances. He alleges that he was denied
2 some unnamed benefit under the Americans with Disabilities Act.
3 Finally, he complains about his prison classification.

4 For the reasons set forth below, the second amended complaint
5 is **DISMISSED** with leave to amend. *Lopez v. Smith*, 203 F.3d 1122 (9th
6 Cir. 2000) (*pro se* litigant should be given an opportunity to amend
7 deficient pleadings unless it is clear that these deficiencies cannot
8 be overcome).

9
10 **II. Discussion and Analysis**

11 **A. Duty to Screen.**

12 The Court has screened the second amended complaint for purposes
13 of determining whether the action is frivolous or malicious; or fails
14 to state a claim on which relief may be granted; or seeks monetary
15 relief against a defendant who is immune from such relief. See
16 28 U.S.C. § 1915(e)(2).

17 The Court's screening of the Complaint under the foregoing
18 statute is governed by the following standards. A complaint may be
19 dismissed as a matter of law for failure to state a claim for two
20 reasons: (1) lack of a cognizable legal theory; or (2) insufficient
21 facts under a cognizable legal theory. *Balistreri v. Pacifica Police*
22 *Dept*, 901 F.2d 696, 699 (9th Cir. 1990). Since Plaintiff is appearing
23 *pro se*, the Court must construe the allegations of the Complaint
24 liberally and must afford Plaintiff the benefit of any doubt. See
25 *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir.
26 1988). Moreover, in determining whether a complaint states a claim
27 on which relief may be granted, allegations of material fact are
28 taken as true and construed in the light most favorable to the

1 Plaintiff. *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir.
2 1989).

3 **B. The California Department of Corrections and Chuckawalla**
4 **State Prison Are Entitled to Eleventh Amendment Immunity.**

5 The CDC and the state prison must be dismissed because they are
6 state agencies entitled to sovereign immunity under the Eleventh
7 Amendment. See *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195 (9th
8 Cir. 2005); *Natural Resources Defense Council v. California Dep't of*
9 *Tranp.*, 96 F.3d 420, 421 (9th Cir.1996); *Taylor v. List*, 880 F.2d
10 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of
11 Prisons was a state agency entitled to Eleventh Amendment immunity);
12 *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201
13 (9th Cir. 1989). Because CDCR is a state agency and the two prisons
14 are part of that state agency, they are entitled to Eleventh
15 Amendment immunity from suit. These Defendants shall be dismissed
16 without leave to amend.

17 **C. Plaintiff Has Failed to State a Claim for Denial of Access**
18 **the Law Library.**

19 Plaintiff claims he was hindered in his access to the law
20 library. Prisoners do not have unfettered access to the law library
21 in prisons. "[P]risoners have a constitutional right of access to the
22 courts." *Bounds v. Smith*, 430 U.S. 817, 821 (1977). This right is
23 only violated if the prisoner has suffered "actual injury," *Lewis v.*
24 *Casey*, 518 U.S. 343, 351 (1996), by way of an official action that
25 hindered his or her pursuit of a "nonfrivolous" or "arguable"
26 underlying legal claim, *id.* at 353 & 353 n.3. See also *Christopher*
27 *v. Harbury*, 536 U.S. 403, 415 (2002) (citing *Lewis*); *Phillips v. Hust*,
28 477 F.3d 1070, 1076 (9th Cir. 2007) (citing *Lewis*). In other words,

1 the prisoner must demonstrate that his legal position has been
2 somehow prejudiced in that a claim has been lost. *See, e.g., Damm v.*
3 *Cooper*, - F.3d -, 2008 WL 2705651, at *1 (5th Cir. 2008). A plaintiff
4 must show that he was actually "shut out" of court in order to state
5 a denial of access cause of action. *Christopher*, 536 U.S. at 415;
6 *Phillips*, 477 F.3d at 1076.

7 Plaintiff has failed to allege an actual injury as required by
8 *Lewis*. He has failed to demonstrate that he suffered any
9 constitutional injury as a result the alleged inability to access the
10 law library. Accordingly, this claim must be dismissed with leave
11 to amend.

12 **D. Plaintiff Has Failed to State a Claim for Screening Out of**
13 **Grievances.**

14 Plaintiff claims that he has filed numerous grievances which
15 have been screened out by prison officials. It is well-established
16 that prisoners have a constitutional right of access to the courts.
17 *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995) (citing *Bounds*, 430
18 U.S. at 821).¹ In addition, the United States Court of Appeals for
19 the Ninth Circuit has held that this right "extends to established
20 prison grievance procedures," since the requirement that a prisoner
21 exhaust the prison grievance procedure before seeking relief in
22 federal court means that the right of access to the courts often
23 "hinges on [the prisoner's] ability to access the prison grievance
24 system." *Id.* The Ninth Circuit has noted that the First Amendment
25

26 ¹ However, there is no separate constitutional entitlement under
27 the Due Process clause in prison grievance procedures. *Sandin v.*
28 *O'Connor*, 515 U.S. 472, 484, 115 S. Ct. 2293 (1995); *Ramirez v. Galaza*,
334 F.3d 850, 860 (9th Cir. 2003); *Mann v. Adams*, 855 F.2d 639, 640 (9th
Cir. 1988).

1 right to file prison grievances is "[o]f fundamental import to
2 prisoners." *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005).

3 However, in order to state a cause of action relating to
4 grievance procedures, an inmate must allege that he was retaliated
5 against for using the prison grievance procedure or was prevented
6 from bringing a specific legal claim by the actions of a prison
7 official in order to establish the deprivation of his First Amendment
8 right of access to the courts. *Id.*, *Lewis v. Casey*, 518 U.S. at 349-
9 51.

10 Here, there are no such allegations. Plaintiff has simply
11 alleged a violation of the grievance procedure. The failure to follow
12 grievance procedures does not give rise to a § 1983 claim. See
13 *Flournoy v. Fairman*, 897 F.Supp. 350, 354 (N.D. Ill. 1995) (jail
14 grievance procedures did not create a substantive right enforceable
15 under § 1983); *Spencer v. Moore*, 638 F.Supp. 315, 316 (E.D. Mo.1986)
16 (violations of grievance system procedures does not deprive inmates
17 of constitutional rights). "The right to petition the government for
18 redress of grievances ... does not guarantee a favorable response,
19 or indeed any response, from state officials. Moreover, the First
20 Amendment's right to redress of grievances is satisfied by the
21 availability of a judicial remedy." *Baltoski v. Pretorius*, 291
22 F.Supp.2d 807, 811 (N.D. Ind. 2003). See also *Ashann-Ra v. Virginia*,
23 112 F.Supp.2d 559, 569 (W.D. Va. 2000) (an institution's failure to
24 comply with state's grievance procedures is not actionable under §
25 1983 and does not compromise an inmate's right of access to the
26 courts). Plaintiff has failed to state a cause of action.

27 //

28 //

1 **F. Plaintiff Has Failed to Allege a Claim Upon Which Relief May**
2 **be Granted for His Prison Classification**

3 Plaintiff claims that prison officials have misclassified him
4 because they erroneously relied on a 1997 conviction. Because inmates
5 have no inherent liberty interest in their classification by prison
6 officials, Plaintiff has failed to state a claim upon which relief
7 may be granted. *See Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir.
8 1998).

9 **E. Plaintiff May Be Able to State a Cause of Action for**
10 **Deliberate Indifference to a Serious Medical Need**

11 Plaintiff lastly claims that Sgt. Ayala denied him access to a
12 lower tier bunk when it had been ordered by prison medical officials.
13 He asserts that he was entitled to the bunk because of a vision and
14 a back impairment and that he injured himself as a result of Ayala's
15 misconduct.

16 The Eighth Amendment does require the government to provide
17 medical care for incarcerated inmates, though not every breach of
18 this obligation is a constitutional violation. *See Estelle v. Gamble*,
19 429 U.S. 97, 105-06 (1976). In order to establish a constitutional
20 violation, Plaintiff must show that Defendants were "deliberately
21 indifferent" to his "serious medical needs." *Id.* at 104.

22 In the Ninth Circuit, the deliberate indifference test is
23 comprised of two parts. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
24 2006); *McGuckin v. Smith*, 974 F.2d 1050 (9th Cir. 1991), overruled
25 on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th
26 Cir. 1997) (en banc). First, Plaintiff must establish a "serious
27 medical need," which may mean, for example, "the existence of an
28 injury that a reasonable doctor or patient would find important and

1 worthy of comment or treatment; the presence of a medical condition
2 that significantly affects an individual's daily activities; or the
3 existence of chronic and substantial pain.'" *Lopez v. Smith*, 203 F.3d
4 1122, 1131 (9th Cir. 2000) (quoting *McGuckin*, 974 F.2d at 1059-60).
5 The Court concludes that Plaintiff's allegations of disabling back
6 pain and a vision impairment are sufficient to establish a serious
7 medical need.

8 Second, Plaintiff must show that Defendants' responses to this
9 need were deliberately indifferent. *Id.* Prison officials may be
10 deliberately indifferent to a prisoner's serious medical need when
11 they delay, deny or intentionally interfere with medical treatment.
12 *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988).
13 Deliberate indifference exists only where the prison official "knows
14 of and disregards an excessive risk to inmate health or safety."
15 *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); accord *Jackson v.*
16 *McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996); *McGuckin*, 974 F.2d at
17 1060.

18 Here, Plaintiff has arguably stated an Eighth Amendment claim
19 upon which relief may be granted as to Sgt. Ayala, and Ayala shall
20 be served with a copy of the summons and complaint.

21
22 **III. Order**

23 It is hereby **ORDERED**:

24 1. All claims against the Defendants except Sgt. Ayala are
25 dismissed.

26 2. It is established that a *pro se* litigant must be given notice
27 of the deficiencies of the complaint and an opportunity to amend the
28 complaint to state a claim, unless it is absolutely clear the

1 deficiencies of the complaint cannot be cured by amendment. *Karim-*
2 *Panahi*, 839 F.2d at 623; *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th
3 Cir. 1987). Plaintiff will be give an opportunity to demonstrate
4 that he can state a viable claim against any individual defendant for
5 denial of access to the Courts. Accordingly, if Plaintiff wishes to
6 pursue this action, he may file a third amended complaint within
7 **twenty-one (21) days** of the date of this Order, remedying the
8 deficiencies discussed above.

9 The third amended complaint must set forth all of the facts
10 which support Plaintiff's claims and may not refer to the original
11 complaint. **The third amended complaint may not raise new causes of**
12 **action. Plaintiff has treated this process like a moving target,**
13 **repeatedly failing to state claims upon which relief may be grantee**
14 **and then alleging new claims. The third amended complaint must be**
15 **limited to the claims stated here. It may not allege any claims**
16 **against a defendant who has been deemed immune.**

17 The third amended complaint should be captioned "THIRD AMENDED
18 COMPLAINT," and should bear this case name. The third amended
19 complaint must clearly identify the specific acts on which the claims
20 are based. It should include the date, time, place, and circumstances
21 of the offending conduct, the names of the individuals who committed
22 the conduct, the full details of what each defendant did or failed
23 to do, and the damage or injury suffered by Plaintiff as a result.

24 Plaintiff is cautioned that he is responsible for presenting
25 factually accurate information to the court. A knowing
26 misrepresentation to the Court is punishable by sanctions, including
27 dismissal.

28 3. If Plaintiff decides not to pursue any other causes of

1 action, he need not file anything in response to this Order and the
2 case shall be dismissed without prejudice.

3 4. Plaintiff is cautioned that the failure to timely file a
4 third amended complaint will be construed by the magistrate judge as
5 his consent to dismissal of this action as to the defendants and
6 claims outlined above.

7 5. The Court's deputy clerk shall serve on Plaintiff a copy of
8 this memorandum and order and a blank civil rights complaint form
9 bearing the case number assigned to this action and marked to show
10 that it is a "Third Amended Complaint." If Plaintiff chooses to
11 continue prosecuting this action, Plaintiff must use this form to the
12 extent possible and not simply attach other documents to it and
13 attempt to incorporate claims by reference to the attachments. He
14 may, however, attach additional pages to detail his allegations, if
15 necessary.

16 **SO ORDERED**

17 Dated: February 4, 2009

A handwritten signature in black ink, appearing to read 'Marc L. Goldman', is written over a horizontal line.

Marc L. Goldman
United States Magistrate Judge